

EXHIBIT 1



DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF RESOLUTION MANAGEMENT
2002 Holcombe Boulevard, Building 110
Houston, TX 77030

AUG 30 2012

In reply refer to: 08N

VIA: United Parcel Service (UPS)

David Scher
888 17th Street, NW
Suite 900
Washington, DC 20006-3307

SUBJECT: Notice of Final Agency Decision for the EEO Complaint of Tuhin Chaudhuri, Case No. 2003-0671-2012103336, filed July 19, 2012, against officials of the South Texas Veterans Healthcare System in San Antonio, Texas

1. On May 25, 2012¹, your client initiated contact with an EEO counselor. Counseling concluded on June 29, 2012, when you and your client were mailed the *Notice of Right to File a Discrimination Complaint*, which you received on July 5, 2012. On July 19, 2012, your client filed a formal complaint of discrimination, VA Form 4939.

2. Your client's complaint of discrimination raises the following claims:

A) Whether the complainant was discriminated against based on reprisal for prior EEO activity, when on May 19, 2012, he was effectively removed from federal employment.²

B) Whether the complainant was discriminated against based on reprisal for prior EEO activity, when on May 19, 2012, his clinical privileges were revoked.

3. Equal Employment Opportunity Commission (EEOC) Regulation 29 C.F.R. 1614.107 (a) (3) provides that the agency shall dismiss an entire complaint that is the basis of a pending civil action in a United States District Court in which the complainant is a party provided that at least 180 days have passed since the filing of the administrative complaint, or that was the basis of a civil action decided by a United States District Court in which the complainant was a party. The Commission has held that the same claim is one that sets for identical matters. *Terhune v. United States Postal Service*, EEOC Request No. 05950907 (July 10, 1997). For purposes of determining whether a

¹ The corrected initial contact date should be May 25, 2012, which is when ORM received the complainant's representative's letter dated May 18, 2012, initiating his intent to invoke the EEO process regarding the removal action.

² The complainant listed additional claims of discrimination that were untimely filed. The claims were designated as background information and it was requested that the only claim for this complaint was the removal claim. The background claims were listed in the civil action also and would be dismissed if not designated as background information.

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Complainant Name: Tuhin Chaudhuri; Case No. 2003-0671-2012103336; Date Filed July 19, 2012

new complaint states the same claim, the Commission focuses on the actions or practice of the agency about which the complainant complains. *Meros v. Department of Commerce, EEOC Request NO. 05950690 (January 10, 1997)*.

4. The complaint file reveals that by notice dated May 18, 2012, and received on May 25, 2012, the complainant's representative initiated EEO contact regarding the complainant's removal effective May 19, 2012.³ Subsequently, a formal complaint was filed on July 19, 2012 concerning the removal claim. On May 23, 2012, the complainant filed a civil action in federal district court, case no. SA12CA0511, alleging discrimination based on violations of Title VII that included his removal effective May 19, 2012.⁴ The complainant has filed an identical claim of discrimination which is the basis of a pending civil action. Therefore, the instant complaint is dismissed.

5. **Your client's complaint of discrimination is hereby DISMISSED in its entirety pursuant to 29 C.F.R. §1614.107(a) (3) for filing the same claim that is a basis of a civil action.** This constitutes the **FINAL AGENCY DECISION** on this complaint. If your client is dissatisfied with this decision, an appeal may be filed in accordance with the attached appeal rights.

6. If you have any questions concerning the processing of this complaint, please contact Wesley Gregg Buckner, EEO Case Manager, at (913) 758-6960.


RODGER L. EVANS
Regional EEO Officer

Enclosures: Appeal Rights
EEOC Form 573

cc: Tuhin Chaudhuri, (Via: UPS)
6514 Pemview
San Antonio, TX 78240

Marie L. Weldon, MHA, FACHE, Director (671/00) (Via: E-mail)
South Texas VA HCS
Audie Murphy VAMC
7400 Merton Minter Blvd.
San Antonio, TX 78229

Brenda Smith, EEO Program Manager (Via (E-mail))

³ The complainant's representative clarified by e-mail on June 5, 2012, that the removal claim was the only claim that should be considered in the informal complaint as the other allegations were for background information only.

⁴ The civil action was filed after the complainant withdrew his request for hearing before the EEOC regarding his prior case number, 2003-0671-2010102786.

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APPEAL RIGHTS

This final agency decision may be appealed within 30 calendar days of receipt of this decision. If you decide to appeal this decision to EEOC, you should use EEOC Form 573, a copy of which is enclosed. If you file an appeal beyond the above-noted time limit, you should provide the Commission with an explanation as to why the appeal should be accepted despite its untimeliness. If you cannot explain why timeliness should be excused, the Commission may dismiss the appeal as untimely.

The appeal should be mailed to:	Equal Employment Opportunity Commission (EEOC) Office of Federal Operations P.O. Box 77960 Washington, DC 20013
Or hand delivered to:	Equal Employment Opportunity Commission Office of Federal Operations Appellate Review Programs 131 M Street, NE, Suite 5SW12G Washington, DC 20507
Or sent by fax to:	(202) 663-7022

A copy of your appeal to the EEOC must also be sent to the VA Office of General Counsel at the following address. Statements or briefs in support of your appeal must be submitted to the EEOC within 30 calendar days of the filing of the appeal. Copies of any such statements or briefs, including any made on EEOC's "Appellant Docketing Statement," must also be sent to the VA Office of General Counsel. Your appeal, and any subsequently filed statement or brief, must contain a statement certifying the date and method by which copies of these documents were served on the VA Office of General Counsel.

You must send a copy of your appeal to:	You must send a copy of your appeal to the Regional EEO Officer at:
Department of Veterans Affairs Office of General Counsel (024) 810 Vermont Avenue, NW Washington, DC 20420	Department of Veterans Affairs Office of Resolution Management (08N) 2002 Holcombe Boulevard, Building 110 Houston, TX 77030

RIGHT TO FILE A CIVIL ACTION

You have the right to file a civil action in an appropriate United States District Court. A civil action may be filed:

- Within 90 days of receipt of this final decision if no appeal to EEOC has been filed; or,
- If an appeal is filed with the EEOC, within 90 days after receipt of EEOC's final decision on your appeal; or,
- After 180 days from the date of filing an appeal with the EEOC if there has been no final decision by the EEOC.

If you file a civil action, the court may, at its discretion and upon your request, appoint an attorney to represent you in the matter, if you do not have or cannot afford one. The court may also authorize the civil action to begin without payment of fees, costs, or other security. The grant or denial of the request is within the sole discretion of the court. Filing a request for an attorney does not extend the time in which to file a civil action. Both the request and the civil action **MUST BE FILED WITHIN NINETY (90) CALENDAR DAYS** of the date of receipt of this final agency decision or, if this decision is appealed to the EEOC, within **NINETY (90) CALENDAR DAYS** of the date of receipt of the EEOC's final decision on the appeal.

Additionally, if you file a civil action, you must name **Eric K. Shinseki, Secretary of Veterans Affairs**, as the defendant. Failure to provide the name and official title of the head of the Department may result in the dismissal of your case.

The U.S. Equal Employment Opportunity Commission

NOTICE OF APPEAL/PETITION
TO THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
OFFICE OF FEDERAL OPERATIONS

P.O. Box 77960

Washington, DC 20013

Complainant Information: (Please Print or Type)

Complainant's name (Last, First, M.I.):	Chaudhuri, Tuhin
Home/mailling address:	6514 Pemview,
City, State, ZIP Code:	San Antonio, TX 78240
Daytime Telephone # (with area code):	
E-mail address (if any):	

Attorney/Representative Information (if any):

Attorney name:	David Scher
Non-Attorney Representative name:	
Address:	888 17th Street, NW, Suite 900
City, State, ZIP Code:	Washington, DC 20006-3307
Telephone number (if applicable):	
E-mail address (if any):	

General Information:

Name of the agency being charged with discrimination:	
Identify the Agency's complaint number:	2003-0671-2012103336
Location of the duty station or local facility in which the complaint arose:	
Has a final action been taken by the agency, an Arbitrator, FLRA, or MSPB on this complaint?	<input type="checkbox"/> Yes; Date Received _____ (Remember to attach a copy) <input type="checkbox"/> No <input type="checkbox"/> This appeal alleges a breach of settlement agreement
Has a complaint been filed on this same matter with the EEOC, another agency, or through any other administrative or collective bargaining procedures?	<input type="checkbox"/> No <input type="checkbox"/> Yes (Indicate the agency or procedure, complaint/docket number, and attach a copy, if appropriate)
Has a civil action (lawsuit) been filed in connection with this complaint?	<input type="checkbox"/> No <input type="checkbox"/> Yes (Attach a copy of the civil action filed)

NOTICE: Please attach a copy of the final decision or order from which you are appealing. If a hearing was requested, please attach a copy of the agency's final order and a copy of the EEOC Administrative Judge's decision. Any comments or brief in support of this appeal **MUST** be filed with the EEOC and with the agency within 30 days of the date this appeal is filed. The date the appeal is filed is the date on which it is postmarked, hand delivered, or faxed to the EEOC at the address above.

Signature of complainant or complainant's representative:	
Date:	

EEOC Form 573 REV 1/01

PRIVACY ACT STATEMENT

(This form is covered by the Privacy Act of 1974. Public Law 93-597. Authority for requesting the personal data and the use thereof are given below.)

1. FORM NUMBER/TITLE/DATE: EEOC Form 573, Notice of Appeal/Petition, January 2001
2. AUTHORITY: 42 U.S.C. § 2000e-16
3. PRINCIPAL PURPOSE: The purpose of this questionnaire is to solicit information to enable the Commission to properly and efficiently adjudicate appeals filed by Federal employees, former Federal employees, and applicants for Federal employment.
4. ROUTINE USES: Information provided on this form will be used by Commission employees to determine: (a) the appropriate agency from which to request relevant files; (b) whether the appeal is timely; (c) whether the Commission has jurisdiction over the issue(s) raised in the appeal, and (d) generally, to assist the Commission in properly processing and deciding appeals. Decisions of the Commission are final administrative decisions, and, as such, are available to the public under the provisions of the Freedom of Information Act. Some information may also be used in depersonalized form as a database for statistical purposes.
5. WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION: Since your appeal is a voluntary action, you are not required to provide any personal information in connection with it. However, failure to supply the Commission with the requested information could hinder timely processing of your case, or even result in the rejection or dismissal of your appeal.

Send your appeal to:
The Equal Employment Opportunity Commission
Office of Federal Operations
P.O. Box 77960
Washington, D.C. 20013

This page was last modified on June 6, 2001.